

36-103, 36-105 amendments, Emory Rogers with Mark Flynn amendments

Ver: 17 September 2013

Additions in bold *italics*

Deletions struck through

2014 \_\_\_\_\_ SESSION

**Part I is the USBC Virginia Construction Code changes only for correlation purposes.**

**Part II is the USBC Virginia Rehabilitation Code changes for correlations purposes.**

**Part III is the USBC Virginia Maintenance Code changes to clarify when a county adopts the VMC it is enforceable in towns with populations less than 3500 unless the town elects to enforce the VMC or not to have county enforcement. Towns with populations 3500 or more can elect to enforce the VMC or have an agreement with the county. Where the towns, regardless of size, have no building department or don't enforce the VMC annual elevator inspections and tenant complaints on unsafe dwelling units would be enforced by the local building department.**

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Draft 3 \_\_\_\_\_ BILL NO. \_\_\_\_\_

Offered \_\_\_\_\_

*A BILL to amend and reenact §§ 36-103 and 36-105 of the Code of Virginia, relating to the Uniform Statewide Building Code; enforcement by counties and towns of provisions for existing buildings.*

Patrons—

Referred to \_\_\_\_\_

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 36-103 and 36-105 of the Code of Virginia are amended and reenacted as follows:**

§ 36-103. Buildings, etc., existing or projected before effective date of Code.

Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part III of the Building Code, building regulations that facilitate for the maintenance, rehabilitation, development and reuse of existing buildings and structures at the least possible cost to ensure the protection of the public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code.

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators; issuance of permits.

33 A. Enforcement generally. Enforcement of the provisions of Parts I and II of the Building Code for  
34 construction and rehabilitation shall be the responsibility of the local building department. There shall  
35 be established within each local building department a local board of Building Code appeals whose  
36 composition, duties and responsibilities shall be prescribed in the Building Code. Any person  
37 aggrieved by the local building department's application of the Building Code or refusal to grant a  
38 modification to the provisions of the Building Code may appeal to the local board of Building Code  
39 appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final  
40 determination by the local board of Building Code appeals. Whenever a county or a municipality does  
41 not have such a building department or board of Building Code appeals, the local governing body shall  
42 enter into an agreement with the local governing body of another county or municipality or with some  
43 other agency, or a state agency approved by the Department for such enforcement and appeals  
44 resulting therefrom. For the purposes of this section, towns ~~with a population of less than 3,500~~ may  
45 elect to administer and enforce Parts I and II of the Building Code; however, where the town does not  
46 elect to administer and enforce Parts I and II of the Building Code, the county in which the town is  
47 situated shall administer and enforce Parts I and II of the Building Code for the town. In the event ~~a~~  
48 ~~such~~ town is situated in two or more counties, those counties shall administer and enforce Parts I and II  
49 of the Building Code for that portion of the town situated within their respective boundaries.

50  
51 B. New construction. Any building or structure may be inspected at any time before completion, and  
52 shall not be deemed in compliance until approved by the inspecting authority. Where the construction  
53 cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be  
54 waived. A building official may issue an annual permit for any construction regulated by the Building  
55 Code. The building official shall coordinate all reports of inspections for compliance with the Building  
56 Code, with inspections of fire and health officials delegated such authority, prior to issuance of an  
57 occupancy permit. Fees may be levied by the local governing body in order to defray the cost of such  
58 enforcement and appeals.

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60 C. Existing buildings and structures.

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62 1. Inspections and enforcement of Part III of the Building Code. The local governing body may also  
63 inspect and enforce the provisions of Part III of the Building Code for existing buildings and  
64 structures, whether occupied or not. Such inspection and enforcement shall include enforcement of the  
65 unsafe structures provisions for tenant complaints in subdivision 2 of this subsection and enforcement  
66 of the elevator, escalator, or related conveyance inspections in subdivision 5 of this subsection and  
67 shall be carried out by an agency or department designated by the local governing body. Where a  
68 county elects to inspect and enforce Part III of the Building Code, the county shall also inspect and  
69 enforce Part III of the Building Code in any town situated in the county which has also adopted Part III  
70 upon entering into a non-monetary agreement with the town, with a population of less than 3,500,  
71 unless the town elects to inspect and enforce Part III of the Building Code with its own building  
72 department. In the event that any such town that has adopted Part III is situated in two or more  
73 counties, then those counties, if electing to inspect and enforce Part III of the Building Code, shall  
74 inspect and enforce Part III of the Building Code for that portion of the town situated within their  
75 respective boundaries, unless the town elects to inspect and enforce Part III of the Building Code with  
76 its own building department. A county shall not inspect and enforce Part III of the Building Code in  
77 towns situated in the county when such towns have a population of 3,500 or more, except by  
78 agreement between the respective local governing bodies.

79  
80 2. Complaints by tenants. However, in any locality which has not elected to inspect and enforce Part III  
81 of the Building Code, upon a finding by the local building department established for the enforcement  
82 of Parts I and II of the Building Code, following a complaint by a tenant of a residential dwelling unit

83 that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of  
84 Part III of the Building Code, the local building department established for the enforcement of Parts I  
85 and II of the Building Code shall enforce such provisions.

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87 3. Inspection warrants. If the local building department receives a complaint that a violation of the  
88 Building Code exists that is an immediate and imminent threat to the health or safety of the owner,  
89 tenant, or occupants of any building or structure, or the owner, occupant, or tenant of any nearby  
90 building or structure, and the owner, occupant, or tenant of the building or structure that is the subject  
91 of the complaint has refused to allow the local building official or his agent to have access to the  
92 subject building or structure, the local building official or his agent may present sworn testimony to a  
93 magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local  
94 building official or his agent an inspection warrant to enable the building official or his agent to enter  
95 the subject building or structure for the purpose of determining whether violations of the Building  
96 Code exist. The local building official or his agent shall make a reasonable effort to obtain consent  
97 from the owner, occupant, or tenant of the subject building or structure prior to seeking the issuance of  
98 an inspection warrant under this section.

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100 4. Transfer of ownership. If the local building department has initiated an enforcement action against  
101 the owner of a building or structure and such owner subsequently transfers the ownership of the  
102 building or structure to an entity in which the owner holds an ownership interest greater than 50  
103 percent, the pending enforcement action shall continue to be enforced against the owner.

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105 5. Elevator, escalator, or related conveyance inspections. The In localities which have not elected to  
106 inspect and enforce Part III of the Building Code, the local governing body shall, however, inspect and  
107 enforce Part III of the Building Code for elevators, escalators, or related conveyances, except for  
108 elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an  
109 agency or department designated by the local governing body.

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111 6. A locality may require by ordinance that any landmark, building or structure that contributes to a  
112 district delineated pursuant to § 15.2-2306 shall not be razed, demolished or moved until the razing,  
113 demolition or moving thereof is approved by the review board, or, on appeal, by the governing body  
114 after consultation with the review board unless the local maintenance code official consistent with the  
115 Uniform Statewide Building Code, agency or department designated by the local governing body to  
116 enforce Part III Maintenance, of the Building Code determines that it constitutes such a hazard that it  
117 shall be razed, demolished or moved.

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119 For the purpose of this subdivision, a contributing landmark, building or structure is one that adds to or  
120 is consistent with the historic or architectural qualities, historic associations, or values for which the  
121 district was established pursuant to § 15.2-2306, because it (i) was present during the period of  
122 significance, (ii) relates to the documented significance of the district, and (iii) possesses historic  
123 integrity or is capable of yielding important information about the period.

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125 7. Fees may be levied by the local governing body in order to defray the cost of such enforcement and  
126 appeals. For purposes of this section, "defray the cost" may include the fair and reasonable costs  
127 incurred for such enforcement during normal business hours, but shall not include overtime costs  
128 unless conducted outside of the normal working hours established by the locality. A schedule of such  
129 costs shall be adopted by the local governing body in a local ordinance. A locality shall not charge an  
130 overtime rate for inspections conducted during the normal business hours established by the locality.  
131 Nothing herein shall be construed to prohibit a private entity from conducting such inspections,

provided the private entity has been approved to perform such inspections in accordance with the written policy of the maintenance code official for the locality.

D. Fees may be levied by the local governing body to be paid by the applicant for the issuance of a building permit as otherwise provided under this chapter, however, notwithstanding any provision of law, general or special, if the applicant for a building permit is a tenant or the owner of an easement on the owner's property, such applicant shall not be denied a permit under the Building Code solely upon the basis that the property owner has financial obligations to the locality that constitute a lien on such property in favor of the locality. If such applicant is the property owner, in addition to payment of the fees for issuance of a building permit, the locality may require full payment of any and all financial obligations of the property owner to the locality to satisfy such lien prior to issuance of such permit. For purposes of this subsection, "property owner" means the owner of such property as reflected in the land records of the circuit court clerk where the property is located, the owner's agent, or any entity in which the owner holds an ownership interest greater than 50 percent.

**2. This Act shall not invalidate any agreement between a town and county for enforcement of any part of the building code in effect as of January 1, 2014.**